Spruce Company *and* Teamsters Local 289, Bakery and Laundry Allied, Sales Drivers and Warehousemen. Case 18–CA–14047

August 16, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Pursuant to a charge filed on May 7, 1996, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 4, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 18–RC–15824. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 16, 1996, the General Counsel filed a Motion for Summary Judgment and brief in support, with exhibits attached. On July 17, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that the Union was certified and requested it to bargain, but attacks the validity of the certification and denies that it has refused to recognize and bargain with the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.[1] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that no issues warranting a hearing are raised with respect to the allegation that the Respondent has refused to bargain with the Union. Although the Respondent has denied this allegation in its answer and in an affidavit given to the Region during the investigation (a copy of which is attached to the General Counsel's motion), nowhere in its answer or affidavit does the Respondent assert that it has offered or agreed to bargain with the Union. On the contrary, the Respondent asserts that it has instead advised the Union that the Respondent's dealings ''continue to be with the NLRB'' and that the Union should contact the NLRB. Moreover, the Respondent has not responded to the General Counsel's Motion for Summary Judgment and thus has not contested the General Counsel's assertion therein that the Respondent's foregoing responses to the Union's requests constitute a refusal to bargain. In these circumstances, we find that the Respondent is in fact refusing to bargain with the Union as alleged. See *Ritz Carlton Hotel Co.*, 321 NLRB 659 (1996) and cases cited therein.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Minnesota corporation, with an office and place of business in Bloomington, Minnesota, has been engaged in the business of providing laundry service and linen delivery.

During the calendar year ending December 31, 1995, the Respondent, in conducting its business operations, purchased and received at its Bloomington, Minnesota facility goods valued in excess of $50,000 directly from points outside the State of Minnesota.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.[2]

[1] The Respondent in its answer appears to contest the validity of the certification on the basis of its objections to the election which alleged that the Union had improperly promised increased wages and benefits to employees and filed a false unfair labor practice charge accusing the Respondent of denying an employee a pay raise. The Regional Director recommended that these objections be overruled, and the Board adopted the Regional Director's findings and recommendations and certified the Union by decision dated February 21, 1996. Although the Respondent in its answer to the complaint also denies that the mail balloting in the election was secret, and asserts that this led to unlawful pressure on individuals, the Respondent did not assert this objection in the underlying representation proceeding.

[2] The Respondent in its answer denies the conclusory allegations that it is engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. However, the Respondent's answer admits the underlying factual allegation that in 1995 it purchased and received goods valued in excess of $50,000 directly from out of state, which clearly establishes that the Respondent is engaged in commerce within the meaning of the Act. See *Siemons Mailing Service*, 122 NLRB 81 (1959). In addition, the Respondent entered into a Stipulated Election Agreement in the underlying representation proceeding whereby it stipulated that it is an employer engaged in

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II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a mail ballot election held between August 15 and 23, 1995, the Union was certified on February 21, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time drivers employed by the Respondent at its Bloomington, Minnesota facility; excluding office clerical employees, production and maintenance employees, guards and supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since late March 1996, the Union has requested the Respondent to bargain, and since about the same time the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since late March 1996 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

commerce within the meaning of the Act and also effectively stipulated that the Union is a labor organization. Accordingly, we find that the Respondent's denials do not raise any issue warranting a hearing in this proceeding. See, e.g., *Presbyterian University Hospital*, 302 NLRB 799 fn. 3 (1991), and *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn.1 (1992).

ORDER

The National Labor Relations Board orders that the Respondent, Spruce Company, Bloomington, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local 289, Bakery and Laundry Allied, Sales Drivers and Warehousemen as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers employed at its Bloomington, Minnesota facility; excluding office clerical employees, production and maintenance employees, guards and supervisors as defined in the Act and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Bloomington, Minnesota, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 18 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 7, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local 289, Bakery and Laundry Allied, Sales Drivers and Warehousemen as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time drivers employed at our Bloomington, Minnesota facility; excluding office clerical employees, production and maintenance employees, guards and supervisors as defined in the Act and all other employees.

SPRUCE COMPANY